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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JACOB T., A Person Coming Under the Juvenile Court Law.	
KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. JOHN W., Defendant and Appellant.	F044225 (Super. Ct. No. JD098801) **O P I N I O N**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Peter Warmerdam, Juvenile Court Referee.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

B.C. Barmann, Sr., County Counsel, and Jennifer L. Thurston, Deputy County Counsel, for Plaintiff and Respondent.

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John W. appeals from an October 2003 order terminating parental rights (Welf. & Inst. Code, § 366.26) to Jacob T., his alleged son.[1] Appellant challenges an earlier ruling

[*] Before Dibiaso, Acting P.J., Vartabedian, J., and Harris, J.

that the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) did not apply. On review, we find that ruling, as well as a prior finding of proper ICWA notice, are final and no longer subject to appellate review.

PROCEDURAL AND FACTUAL HISTORY

In December 2002, the Kern County Superior Court adjudged Jacob, born earlier that year, a dependent child of the court and removed him from parental custody. The court previously determined the infant came within its jurisdiction under section 300, subdivisions (b) and (g) in large measure due to both the mother's and appellant's ongoing substance abuse. With regard to appellant, he was also in state prison following a conviction for vehicular manslaughter while under the influence and thus unable to provide for Jacob. The court ordered reunification services for the mother, but not for appellant, who was the child's alleged father (§ 361.5, subd. (a)).

At the outset of the case, the court inquired of the mother whether she believed she had any Indian ancestry. She replied that she had Indian blood but she had never been part of a tribe. When asked if she knew what tribe she would be a part of, the mother answered no but added her father would have "all that information." A social worker with respondent Kern County Department of Human Services (the department) tried to contact the maternal grandfather without success. Nevertheless, the department sent notice of the proceedings to the Bureau of Indian Affairs.

In the course of the December 2002 disposition hearing, the court found that the department gave proper notice to the Bureau of Indian Affairs regarding the possibility that Jacob might come within ICWA. Appellant did not appeal the court's disposition.

At a six-month status review hearing conducted in June 2003, the court found there was no reason to believe that Jacob was an Indian child and ICWA was not

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

applicable. At the same status review hearing, the court terminated reunification efforts and set a section 366.26 hearing to select and implement a permanent plan for Jacob. Despite notice to appellant of his writ remedy (Cal. Rules of Court, rule 39.1B), appellant did not seek any writ relief.

By the time of the section 366.26 hearing in October 2003, it was undisputed that Jacob was adoptable. Consequently, the court, having found it likely Jacob would be adopted, terminated parental rights.

DISCUSSION

On his appeal from the termination order, appellant challenges for the first time the court's June 2003 status review finding that ICWA did not apply to Jacob's dependency.[2] Appellant contends the department provided incomplete information to the Bureau of Indian Affairs. The problem for appellant is that the court's June 2003 finding, not to mention the court's December 2002 finding that proper notice was given, have long been final and therefore are not reviewable on appeal from the termination hearing. (*In re Pedro N.* (1995) 35 Cal.App.4th 183, 185.)

In *In re Pedro N., supra,* 35 Cal.App.4th at page 185, this court held a parent who fails to timely challenge a juvenile court's action regarding ICWA is foreclosed from raising ICWA notice issues once the court's ruling is final in a subsequent appeal. In so ruling, we specifically ruled we were only addressing the rights of the parent, not those of a tribe. Indeed, this court does not foreclose a tribe's rights under ICWA on account of a parent's appellate waiver. (See *In re Desiree F.* (2000) 83 Cal.App.4th 460 [where this court reversed the denial of a tribe's motion to intervene after a final order terminating parental rights and invalidated actions dating back to the outset of the dependency and taken in violation of ICWA].)

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[2] We assume for the sake of argument that appellant has standing despite the fact he was only the child's alleged father.

Appellant invites us to revisit our holding because of another appellate court's ruling in *In re Marinna J.* (2001) 90 Cal.App.4th 731. The *Marinna J.* court disagreed with our holding on the theory it was inconsistent with the protections ICWA affords to the interests of Indian tribes. On this point, we differ.

> "25 United States Code section 1914 confers standing upon a parent claiming an ICWA violation to petition to invalidate a state court dependency action.[3] It may even excuse a parent's failure to raise an ICWA objection in the trial court. (See *Matter of L.A.M.* (Alaska 1986) 727 P.2d 1057, 1059-1060.) However, it does not authorize a court to defer or otherwise excuse a parent's delay in presenting his or her petition until well after the disputed action is final. Nothing in the language of the section supports the [parent's] view. We recognize courts liberally construe the ICWA for the benefit of Indians. (*Matter of L.A.M.*, *supra*, 727 P.2d at p. 1060, citing *Preston v. Heckler* (9th Cir. 1984) 734 F.2d 1359, 1369.) However, the construction the [parent] proposes for 25 United States Code section 1914 is not liberal; it is unreasonable given the statutory language. Had the Congress intended to permit a parent to allege an ICWA violation at any point in the proceedings, it could well have so stated. Indeed, in another portion of the ICWA (25 U.S.C. § 1911(c)), the Congress conferred the right to intervene in any dependency or termination action 'at any point in the proceeding.' (See also *Matter of Guardianship of Q.G.M.* (Okla. 1991) 808 P.2d 684.) We assume from the absence of such language in 25 United States Code section 1914, that the Congress did not intend to preempt, in the case of appellate review, state law requiring timely notices of appeal from a parent who appeared in the underlying proceedings and who had knowledge of the applicability of the ICWA." (*In re Pedro N., supra,* 35 Cal.App.4th at p.190.)

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3 25 United States Code section 1914 specifically states:

> "Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title."

In conclusion, we hold appellant, by failing to seek appellate review of the juvenile court's earlier rulings with respect to ICWA, has waived his right to object on ICWA grounds to the termination of parental rights.

DISPOSITION

The order terminating parental rights is affirmed.